

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 482

Introduced by Senator Kehoe

February 17, 2011

An act to amend Sections 115875, 115880, 115885, 115890, 115895, and 115915 of, to add Section 115881 to, and to repeal Sections 115900 and 115905 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as amended, Kehoe. Public beach contamination: standards: testing: closing.

Existing law requires local health officers to submit to the State Water Resources Control Board prescribed information regarding beach postings and closures and requires the board to make that information available to the public and to post the information on its Internet Web site.

Existing law requires the State Department of Public Health to adopt regulations to establish minimum standards for the sanitation of public beaches, as defined, and to require the testing of the waters adjacent to beaches for microbiological contaminants and to require posting and closure of beaches that are in violation of the standards. A violation of these regulations is a crime.

This bill would *require that the department draft regulations relating to testing of waters adjacent to public beaches, as specified. The bill would, commencing January 1, 2012, ~~give primary responsibility for administration of the provisions relating to~~ require the board to be responsible for* monitoring protocols, site locations, monitoring frequency, and prescribed testing ~~to the board~~. *The bill, until June 30, 2016, would provide that not more than \$1,800,000 of specified funds may be used, upon appropriation by the Legislature, as a funding source for this program. The bill would also make related changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 115875 of the Health and Safety Code
2 is amended to read:

3 115875. For the purposes of this article, the following terms
4 have the following meanings:

5 (a) “Public beach” means any beach area used by the public for
6 recreational purposes that is owned, operated, or controlled by the
7 state, any state agency, any local agency, or any private person in
8 this state, and is located in the coastal zone, as defined in Section
9 30103 of the Public Resources Code, or within the jurisdiction of
10 the San Francisco Bay Conservation and Development
11 Commission, as set forth in Section 66610 of the Government
12 Code.

13 (b) “Board” means the State Water Resources Control Board.

14 (c) “Department” means the State Department of Public Health.

15 (d) “Health officer” means the legally appointed local health
16 officer or director of environmental health of the county or city
17 having jurisdiction of the area in which a public saltwater beach
18 is located.

19 SEC. 2. Section 115880 of the Health and Safety Code is
20 amended to read:

21 115880. (a) The department shall by regulation, in consultation
22 with the board, local health officers, and the public, establish,
23 maintain, and amend as necessary, minimum standards for the
24 sanitation of public beaches, including, but not limited to, the
25 removal of refuse, as it determines are reasonably necessary for
26 the protection of the public health and safety.

1 (b) Prior to final adoption or amendment by the department, the
2 regulations and standards required by this section shall undergo
3 an external comprehensive review process similar to the process
4 set forth in Section 57004 of the Health and Safety Code.

5 (c) The regulations shall, at a minimum, do all of the following:

6 (1) Require the testing of the waters adjacent to all public
7 beaches for microbiological contaminants, including, but not
8 limited to, total coliform, fecal coliform, and enterococci bacteria.

9 The department may require the testing of waters adjacent to all
10 public beaches for microbiological indicators other than those set
11 forth in this paragraph, or a subset of those set forth in this
12 paragraph, if the department affirmatively establishes, based on
13 the best available scientific studies and the weight of the evidence,
14 that the alternative indicators are as protective of the public health.

15 (2) Establish protective minimum standards for total coliform,
16 fecal coliform, and enterococci bacteria, or for other
17 microbiological indicators that the department determines are
18 appropriate for testing pursuant to paragraph (1).

19 (3) *Require that the waters adjacent to public beaches are tested*
20 *for total coliform, fecal coliform, and enterococci bacteria, or for*
21 *other microbiological indicators that the department determines*
22 *are appropriate for testing pursuant to paragraph (1). Except as*
23 *set forth in subdivision (d), testing shall be conducted on at least*
24 *a weekly basis from April 1 to October 31, inclusive, of each year*
25 *beginning in 2012, if all of the following apply:*

26 (A) *The beach is visited by more than 50,000 people annually.*

27 (B) *The beach is located on an area adjacent to a storm drain*
28 *that flows in the summer.*

29 (d) *The monitoring frequency and locations established pursuant*
30 *to this section and related regulations may be reduced or altered*
31 *only after the testing required pursuant to paragraph (3) of*
32 *subdivision (a) reveals levels of microbiological contaminants that*
33 *do not exceed, for a period of two years, the minimum protective*
34 *standards established pursuant to this section.*

35 (e) *The local health officer shall be responsible for testing the*
36 *waters adjacent to, and coordinating the testing of, all public*
37 *beaches within his or her jurisdiction.*

38 (f) *The local health officer may meet the testing requirements*
39 *of this section by utilizing test results from other parties conducting*

1 *microbiological contamination testing of the waters under his or*
2 *her jurisdiction.*

3 (g) *Any city or county may adopt standards for the sanitation*
4 *of public beaches within its jurisdiction that are stricter than the*
5 *standards adopted by the department pursuant to this section.*

6 SEC. 3. Section 115881 is added to the Health and Safety Code,
7 to read:

8 115881. (a) Commencing January 1, 2012, ~~primary jurisdiction~~
9 ~~shall be transferred from the department to the board for state~~
10 ~~administration the board shall be responsible for all of the~~
11 ~~following:~~

12 (1) *Directing the monitoring required to be conducted by Section*
13 *115880.*

14 ~~(1) Determining~~

15 (2) *Establishing and reviewing monitoring protocols, site*
16 *locations, and monitoring frequency based on risks to public health.*
17 *monitoring frequencies consistent with Section 115880.*

18 ~~(2) Identification of~~

19 (3) *Identifying options for funding the monitoring needed to*
20 *fulfill the requirements of Section 115880, including options for*
21 *integrating and streamlining existing monitoring programs or*
22 *requirements associated with waste discharge requirements, Total*
23 *Maximum Daily Load implementation, or other monitoring*
24 *programs. If a regional board or state board issues waste discharge*
25 *requirements that require monitoring to meet the requirements set*
26 *forth in paragraph (1) of subdivision (c) of Section 115880, the*
27 *monitoring shall only be required to the extent that the discharge*
28 *has the potential to cause or contribute to exceedances of the*
29 *standards established pursuant to paragraph (2) of subdivision (c)*
30 *of Section 115880. Nothing in this section shall preclude any*
31 *discharger from voluntarily participating in monitoring necessary*
32 *to meet the requirements of Section 115880.*

33 ~~(3) Requiring that the waters adjacent to public beaches are~~
34 ~~tested for total coliform, fecal coliform, and enterococci bacteria,~~
35 ~~or for other microbiological indicators that the department~~
36 ~~determines are appropriate for testing pursuant to paragraph (1).~~
37 ~~Except as set forth in subdivision (b), testing shall be conducted~~
38 ~~on at least a weekly basis from April 1 to October 31, inclusive,~~
39 ~~of each year beginning in 2012, if all of the following apply:~~

40 (A) *The beach is visited by more than 50,000 people annually.*

1 ~~(B) The beach is located on an area adjacent to a storm drain~~
2 ~~that flows in the summer.~~

3 ~~(b) The monitoring frequency and locations established pursuant~~
4 ~~to this section and related regulations may only be reduced or~~
5 ~~altered after the testing required pursuant to paragraph (3) of~~
6 ~~subdivision (a) reveals levels of microbiological contaminants that~~
7 ~~do not exceed, for a period of two years, the minimum protective~~
8 ~~standards established pursuant to Section 115880.~~

9 ~~(c) The local health officer shall be responsible for testing the~~
10 ~~waters adjacent to, and coordinating the testing of, all public~~
11 ~~beaches within his or her jurisdiction.~~

12 ~~(d) The local health officer may meet the testing requirements~~
13 ~~of this section by utilizing test results from other parties conducting~~
14 ~~microbiological contamination testing of the waters under his or~~
15 ~~her jurisdiction.~~

16 ~~(e) Any city or county may adopt standards for the sanitation~~
17 ~~of public beaches within its jurisdiction that are stricter than the~~
18 ~~standards adopted by the board pursuant to this section.~~

19 *(b) The establishment and review of monitoring protocols, site*
20 *locations, and monitoring frequencies by the board pursuant to*
21 *this section shall be done in consultation with the department and*
22 *local health officers, but shall not be subject to Chapter 3.5*
23 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
24 *2 of the Government Code.*

25 *(c) Until June 30, 2016, not more than one million eight hundred*
26 *thousand dollars (\$1,800,000) of the funds collected annually*
27 *pursuant to Section 13260 of the Water Code may be used, upon*
28 *appropriation by the Legislature, as a funding source for the*
29 *implementation of this article.*

30 ~~(f)~~

31 *(d) Any duty imposed upon a local public officer or agency*
32 *pursuant to this ~~article~~ section and Section 115880 shall be*
33 *mandatory only during a fiscal year in which the Legislature has*
34 *appropriated sufficient funds, as determined by the board, in the*
35 *annual Budget Act or otherwise for local agencies to cover the*
36 *costs to those agencies associated with the performance of these*
37 *duties. The board shall annually, within 15 days after enactment*
38 *of the Budget Act, file a written statement with the Secretary of*
39 *the Senate and with the Chief Clerk of the Assembly memorializing*
40 *whether sufficient funds have been appropriated.*

1 SEC. 4. Section 115885 of the Health and Safety Code is
2 amended to read:

3 115885. (a) The health officer having jurisdiction over the
4 area in which a public beach is created shall:

5 (1) Inspect the public beach to determine whether the standards
6 established pursuant to Section 115880 are being complied with.
7 If the health officer finds any violation of the standards, he or she
8 may restrict the use of, or close, the public beach or portion thereof
9 in which the violation occurs until the standard is complied with.

10 (2) Investigate any complaint of a violation of any standard
11 established by the department pursuant to Section 115880. If the
12 health officer finds any violation of the standards prescribed by
13 the department, he or she may restrict the use of, or close, the
14 public beach or portion thereof until the standard is complied with.
15 If the person who made the complaint is not satisfied with the
16 action taken by the health officer, he or she may report the violation
17 to the department. The department shall investigate the reported
18 violation, and, if it finds that the violation exists, it may restrict
19 the use of or close the public beach or portion thereof until the
20 standard violated is complied with.

21 (3) Whenever a beach is posted, closed, or otherwise restricted
22 in accordance with Section 115915, inform the agency responsible
23 for the operation and maintenance of the public beach within 24
24 hours of the posting, closure, or restriction.

25 (4) Establish a telephone hotline to inform the public of all
26 beaches currently closed, posted, or otherwise restricted. The
27 hotline shall be updated as needed in order to convey changes in
28 public health risks.

29 (5) Report any violation of the standards established pursuant
30 to Section 115880 to the district attorney, or if the violation
31 occurred in a city and, pursuant to Section 41803.5 of the
32 Government Code, the city attorney is authorized to prosecute
33 misdemeanors, to the city attorney.

34 (6) In the event of a known untreated sewage release,
35 immediately test the waters adjacent to the public beach and to
36 take action pursuant to regulations established under Sections
37 115880 and 115881.

38 (7) Notwithstanding any other provision of law, in the event of
39 an untreated sewage release that is known to have reached
40 recreational waters adjacent to a public beach, immediately close

1 those waters until it has been determined by the local health officer
2 that the waters are in compliance with the standards established
3 pursuant to Section 115880.

4 (b) If the department is aware of an untreated sewage release
5 that has reached recreational waters adjacent to a public beach,
6 and that the local health officer has not taken action to close the
7 beach, it may take action to close those waters until the waters are
8 in compliance.

9 (c) *Any duty imposed upon a local public officer or agency*
10 *pursuant to this section shall be mandatory only during a fiscal*
11 *year in which the Legislature has appropriated sufficient funds,*
12 *as determined by the State Public Health Officer, in the annual*
13 *Budget Act or otherwise for local agencies to cover the costs to*
14 *those agencies associated with the performance of these duties.*
15 *The State Public Health Officer shall annually, within 15 days*
16 *after enactment of the Budget Act, file a written statement with the*
17 *Secretary of the Senate and with the Chief Clerk of the Assembly*
18 *memorializing whether sufficient funds have been appropriated.*

19 SEC. 5. Section 115890 of the Health and Safety Code is
20 amended to read:

21 115890. Prior to restricting the use of or closing a public beach
22 or portion thereof alleged to be in violation of standards, the health
23 officer or the department as the case may be, shall give reasonable
24 notice of the violation to the owner of, or person or agency in
25 charge of, the beach.

26 SEC. 6. Section 115895 of the Health and Safety Code is
27 amended to read:

28 115895. Any private person who violates any regulation
29 adopted by the department pursuant to Section 115880 is guilty
30 of a misdemeanor.

31 SEC. 7. Section 115900 of the Health and Safety Code is
32 repealed.

33 SEC. 8. Section 115905 of the Health and Safety Code is
34 repealed.

35 SEC. 9. Section 115915 of the Health and Safety Code is
36 amended to read:

37 115915. (a) Whenever any *public* beach fails to meet the
38 bacteriological standards established pursuant to subdivision (b)
39 of Section 115880, the health officer shall, at a minimum, post the
40 *public* beach with conspicuous warning signs to inform the public

1 of the nature of the problem and the possibility of risk to public
2 health.

3 (b) A warning sign shall be visible from each legal primary
4 *public* beach access point, as identified in the coastal access
5 inventory prepared and updated pursuant to Section 30531 of the
6 Public Resources Code, and any additional access points identified
7 by the health officer.

8 (c) *Any duty imposed upon a local public officer or agency*
9 *pursuant to this section shall be mandatory only during a fiscal*
10 *year in which the Legislature has appropriated sufficient funds,*
11 *as determined by the State Public Health Officer, in the annual*
12 *Budget Act or otherwise for local agencies to cover the costs to*
13 *those agencies associated with the performance of these duties.*
14 *The State Public Health Officer shall annually, within 15 days*
15 *after enactment of the Budget Act, file a written statement with the*
16 *Secretary of the Senate and with the Chief Clerk of the Assembly*
17 *memorializing whether sufficient funds have been appropriated.*